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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CLRB Hanson Industries, LLC, et al., NO. C 05-03649 JW

Plaintiffs,
v.
Google Inc.,

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Defendant.

I. INTRODUCTION

CLRB Hanson Industries LLC (“Hanson”) and Howard Stern (“Stern”) (collectively, “Plaintiffs”) bring this putative class action against Defendant Google, Inc. (“Google”), alleging, *inter alia*, breach of contract and violation of California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*

Presently before the Court is Google’s Motion for Partial Summary Judgment regarding its practice of charging AdWords customers up to 120% percent of their “Daily Budget.”¹ The Court

¹ At the December 3, 2007 Case Management Conference, the parties informed the Court that they disagreed whether the Court’s August 21, 2007 Order on the parties’ cross-motions for partial summary judgment resolved this issue. (Docket Item No. 201.) Thus, the Court ordered further briefing. (*Id.*) Google requests relief as matter of law that 120% delivery cannot form the basis for a claim, while Plaintiffs contend that such a claim remains in the case. (Google’s Opening Brief Regarding the 120% Rule, hereafter, “PSJ Motion,” Docket Item No. 202; Plaintiffs’ Supplemental Submission Re the Court’s Order of August 21, 2007, hereafter, “PSJ Opposition,” Docket Item No. 205.) The Court construes Google’s brief as a further motion for partial summary judgment and Plaintiffs’ brief as an opposition to that motion.

1 conducted a hearing on February 26, 2008. Based on the papers submitted to date and oral
2 arguments of counsel, the Court GRANTS in part and DENIES in part Google's Motion.

3 **II. BACKGROUND**

4 On August 3, 2005, Plaintiffs filed this putative class action. (Notice of Removal, Docket
5 Item No. 1, Ex. A-1.) A detailed outline of the facts of this case and Google's technology may be
6 found in the Court's August 21, 2007 Order. (See Docket Item No. 193.) The Court reviews the
7 facts relevant to the present motion.

8 **A. Background**

9 Hanson is a Minnesota limited liability corporation. (Second Amended Class Action
10 Complaint ¶ 8, hereafter, "SAC," Docket Item No. 47.) Stern is a New Jersey citizen. (SAC ¶ 9.)
11 Google is a Delaware corporation with its principal place of business in California. (SAC ¶ 10;
12 Defendant Google Inc.'s Answer to Plaintiffs' Second Amended Class Action Complaint ¶ 10,
13 hereafter, "Answer," Docket Item No. 62.) Hanson began running campaigns using Google's ad
14 service in July 2002, and Stern began running campaigns in October 2003. (SAC ¶¶ 56-68.)

15 Google provides a widely used Internet search engine service located at
16 <http://www.google.com>. (SAC ¶ 11; Answer ¶ 11.) Users type words ("search terms") into a search
17 box on Google's search screen; the search engine returns a search results page with links to websites
18 that contain the search terms. The search results page also contains a "Sponsored Links" section,
19 which contains links to the websites of businesses who provide the services, or sell the products,
20 described by the search terms that users input.² "Sponsored Links" are advertisements of the
21 customers who sign up for, and pay for, Google's global advertising program ("AdWords"). (*Id.*;
22 see also SAC ¶ 14; Answer ¶ 14; Statement of Undisputed Facts ¶¶ 1-2, hereafter, "SUF," submitted
23 under seal.)

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26 ² "Sponsored Links" advertisements also appear "in similar locations on the search and
27 content sites and products in the Google network." (SAC ¶ 11; Answer ¶ 11.)

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1 Customers enroll in AdWords by signing up online. (SUF ¶ 4; SAC ¶ 19; Answer ¶ 19.)
2 During the registration process, a customer (1) creates its ad text (the text of the advertisement that
3 will appear with the search result); (2) selects keywords that will trigger the display of the ad;³ (3)
4 selects geographic locations to target; (4) sets a maximum cost-per-click to spend when someone
5 clicks on the ad; and (5) sets a Daily Budget. (SUF ¶¶ 6, 9; SAC ¶¶ 22, 30; Answer ¶¶ 22, 30.) To
6 create the AdWords account itself, a customer must provide an email address, choose a password,
7 and select a method of billing. (SUF ¶ 8; SAC ¶¶ 22-25; Answer ¶¶ 22-25.)

8 During the sign-up process, customers can click on form questions or search for help by
9 entering terms for which they have questions. (SUF ¶ 7; SAC ¶ 26; Answer ¶ 26.) In each case,
10 Google responds with relevant portions of the Frequently Asked Questions (“FAQs”). *Id.* AdWords
11 states that it gives customers the right to set their own daily budget as a method of cost control.
12 (SUF ¶ 13; SAC ¶ 32; Answer ¶ 32.) On an AdWords webpage titled “AdWords Advantages,”
13 Google represents as follows:

- 14 (1) Customers can “[f]ully control [their] ad budget” (SUF ¶ 13; SAC ¶ 16; Answer ¶
15 16);
- 16 (2) If an AdWords customer accrues clicks that would result in charges of more than 20
17 percent above a customer’s Daily Budget in a single day, the AdWords system is
18 designed to provide an overdelivery credit (SUF ¶ 15);
- 19 (3) If an ad campaign accrues clicks that would result in charges exceeding more than the
20 number of days in the month multiplied by the customer’s Daily Budget, the
21 AdWords system will provide the customer with an overdelivery credit for the
22 charges at the end of the month (SUF ¶ 16).

23 **B. Procedural History**

24 On September 12, 2005, Google removed this action to federal court on the basis of diversity
25 jurisdiction. (See Docket Item No. 1.) The operative complaint is Plaintiffs’ Second Amended
26 Class Action Complaint, filed on May 4, 2006. In their Second Amended Class Action Complaint,
27 Plaintiffs allege five causes of action: (1) breach of contract; (2) breach of the implied covenant of

28 ³ The “keywords” trigger the ad to run when an Internet user inserts a search into the Google
29 search engine which includes those keywords. (SAC ¶ 22; Answer ¶ 22.)

1 good faith and fair dealing; (3) violation of Cal. Bus. & Prof. Code § 17200 *et seq.*; (4) violation of
2 Cal. Bus. & Prof. Code § 17500 *et seq.*; and (5) unjust enrichment.

3 On August 21, 2007, the Court granted Google's motion for summary judgment as to
4 Plaintiffs' Second and Fifth Causes of Action, and denied Google's motion as to Plaintiffs' First,
5 Third, and Fourth Causes of Action. (August 21, 2007 Order, Docket Item No. 193.) In that Order,
6 the Court also found that a valid advertising contract exists between the parties (the "AdWords
7 Agreement"), which includes both the Terms and Conditions and the FAQs. (*Id.*)

8 Presently before the Court is Google's motion for partial summary judgment regarding its
9 practice of charging AdWords customers up to 120% percent of their "Daily Budget."

10 **III. STANDARDS**

11 Although motions for partial summary judgment are common, Rule 56 of the Federal Rules
12 of Civil Procedure, which governs summary judgment, does not contain an explicit procedure
13 entitled "partial summary judgment." As with a motion under Rule 56(c), partial summary judgment
14 is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together
15 with the affidavits, if any, show that there is no genuine issue as to any material fact and that the
16 moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The purpose of
17 partial summary judgment "is to isolate and dispose of factually unsupported claims or defenses."
18 Celotex v. Catrett, 477 U.S. 317, 323-24 (1986). The moving party "always bears the initial
19 responsibility of informing the district court of the basis for its motion, and identifying the evidence
20 which it believes demonstrates the absence of a genuine issue of material fact." *Id.* at 323. The non-
21 moving party must then identify specific facts "that might affect the outcome of the suit under the
22 governing law," thus establishing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e).

23 When evaluating a motion for partial or full summary judgment, the court views the evidence
24 through the prism of the evidentiary standard of proof that would pertain at trial. Anderson v.
25 Liberty Lobby Inc., 477 U.S. 242, 255 (1986). The court draws all reasonable inferences in favor of
26 the non-moving party, including questions of credibility and of the weight that particular evidence is
27

1 accorded. See, e.g. Masson v. New Yorker Magazine, Inc., 501 U.S. 496, 520 (1992). The court
2 determines whether the non-moving party’s “specific facts,” coupled with disputed background or
3 contextual facts, are such that a reasonable jury might return a verdict for the non-moving party.
4 T.W. Elec. Serv., 809 F.2d at 631. In such a case, partial summary judgment is inappropriate.
5 Anderson, 477 U.S. at 248. However, where a rational trier of fact could not find for the non-
6 moving party based on the record as a whole, there is no “genuine issue for trial.” Matsushita Elec.
7 Indus. Co. v. Zenith Radio, 475 U.S. 574, 587 (1986).

8 **IV. DISCUSSION**

9 Google moves for partial summary judgment on the grounds that its practice of charging
10 customers up to 120% of their “Daily Budget” cannot, in and of itself, form the basis for (1)
11 Plaintiffs’ breach of contract cause of action or (2) their unfair competition causes of action. (PSJ
12 Motion at 13.) The Court addresses each of these contentions in turn.

13 **A. Breach of Contract**

14 Plaintiffs contend that Google’s practice of charging customers up to 120% of their “Daily
15 Budget” constitutes a breach of the AdWords Agreement because the agreement implies that
16 customers will not be charged more than their “Daily Budget” on any given day. (PSJ Opposition at
17 15.)

18 Under California law, interpretation of the language of a contract is a question of law, to be
19 determined exclusively by the court. See Waller v. Truck Ins. Exchange, Inc., 11 Cal. 4th 1, 18
20 (1995). The court interprets a contract “to give effect to the mutual intention of the parties.”
21 Foster-Gardner, Inc. v. National Union Fire Ins. Co., 18 Cal. 4th 857, 868 (1998). Since intent is
22 inferred, if possible, “solely from the written provisions of the contract . . . , [i]f contractual language
23 is clear and explicit, it governs.” Id. Only when terms are ambiguous, does the court look to
24 extrinsic evidence to aid interpretation, while straining not to find ambiguity where none exists.
25 Waller, 11 Cal. 4th at 19.

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1 In its August 21, 2007 Order, the Court found that the AdWords Agreement is a valid
2 advertising contract between the parties, which includes both the Terms and Conditions and the
3 FAQs.⁴ A customer creating an AdWords account in accordance with the AdWords Agreement
4 must specify a “Daily Budget,” which Google defines in its AdWords Glossary as follows:

5 The amount you’re willing to spend on a specific AdWords campaign each day.

6 AdWords displays your ad as often as possible while staying within your daily
7 budget. When the budget limit is reached, your ads will typically stop showing for
that day. How quickly your ads are shown during a given day is determined by your
ad delivery setting.⁵

8 “Daily Budget” is the very first word listed in the AdWords Agreement Glossary. (Selzter
9 Decl., Ex. D.) While this definition may imply that customers will not accrue a charge over
10 what they set for their “Daily Budget” on any particular day, directly below the statement
11 (and still within the section defining “Daily Budget”) the AdWords Glossary goes on to state:

12 On any single day, the AdWords system may deliver up to 20% more ads than your
13 daily budget calls for. This helps make up for other days in which your daily budget
14 is not reached. However, you’ll never be charged more than your average daily
budget over the course of a month. For example: if your daily budget is \$10 and the
month has 30 days, you might be charged up to \$12 on any single day but your
monthly charges will never exceed \$300. (Id.)

16 Thus, any customer looking up the meaning of “Daily Budget” could see from the plain language of
17 the AdWords Agreement Glossary that overdelivery is built into the AdWords system and part of the
18 contracted for advertising service.

19 Similarly, the AdWords Agreement FAQs section, which was in effect when each of the
20 Plaintiffs enrolled in AdWords, answered two hypothetical questions regarding the meaning of
21 “Daily Budget” in much the same way as the Glossary. For example, the first two questions and

24 ⁴ (See August 21, 2007 Order at 15.) Specifically, the Court found, “[E]ach Plaintiff entered
25 into a contract with Google, the terms of which were: (1) the Terms and Conditions; (2) the Program
FAQs (subject to periodic revision); and (3) the terms of each advertising campaign submitted or
modified by the Plaintiffs.” (Id.)

26 ⁵ (Declaration of Marc M. Seltzer, Ex. D, hereafter, “Selzter Decl.,” Docket Item No. 206.)
27 This definition of “Daily Budget” was taken from Google’s FAQs printed August 14, 2006. Id.

1 answers under the section labeled “Account Set Up: Daily Budget” when Plaintiff Stern enrolled in
2 AdWords were as follows:

3 **1. What is a daily budget?**

4 A daily budget enables you to set a limit on the amount you spend each day. You set
5 a separate daily budget for each of your campaigns. Since you only pay when
6 someone clicks on your ads, you won’t necessarily reach the daily budget limit you
7 set.
8 . . .

9 **2. Why did I receive more clicks than my daily budget on a particular day?**

10 Traffic is not constant from day to day. For example, fewer people search the Web
11 on weekends than during the week. To account for this and maximize the potential of
12 your advertising, Google may allow up to 20% more clicks in one day than your daily
13 budget specifies.

14 If you budget \$100 per day in a 30-day month, you may receive more than \$100 in
15 clicks on a given day, but the maximum you would pay is \$3000 for that month. If
16 we do overdeliver clicks, you will receive a credit . . .⁶

17 The “Account Set Up: Daily Budget” section of the FAQs makes explicit reference to the possibility
18 that AdWords customers may be charged up to 120% of their “Daily Budget.” Thus, the question
19 and answer format of the FAQs section allows any customer investigating the meaning of “Daily
20 Budget” to quickly determine the meaning of the term.

21 Plaintiffs contend that while Google “prominently and repeatedly” referred to a “Daily
22 Budget” and promised customers that it would stay within the customers’ own set “Daily Budget,” it
23 obscured “any possible reference to overdelivery.” (PSJ Opposition at 16.) However, in the two
24 instances shown above, the AdWords Agreement states that Google “may deliver up to 20% more
25 ads than your daily budget calls for” and that customers “may be charged 20% more clicks in one
26 day than [the customer’s] daily budget specifies.” In each instance, the AdWords Agreement
27 discloses Google’s practice of charging up to 120% of a customer’s “Daily Budget” directly under

28 ⁶ (Selzter Decl., Ex. A at GOOG-HN 20888.) The AdWords Agreement FAQs section in
29 effect when Hanson enrolled contains almost identical language. (*Id.*, Ex. B at GOOG-HN 20904.)

1 the definition of “Daily Budget” in way that is equally as prominent and accessible as the definition
2 of “Daily Budget.”

3 Under the plain language of the AdWords Agreement, Google is not in breach of the “Daily
4 Budget” provision if the following two things are true: (1) in any particular day in which a
5 customer’s ad campaign is running, Google charges that customer no more than 120% of his or her
6 “Daily Budget;”⁷ and (2) in any particular month in which a customer’s ad is running, Google
7 charges a customer no more than his or her “Daily Budget” multiplied by the days in which the ad
8 ran in the month. Accordingly, the Court finds that Google’s practice of charging customers up to
9 120% of their “Daily Budget” does not, in and of itself, constitute a breach of the AdWords
10 Agreement.⁸

11 However, as the Court found in its August 21, 2007 Order, there remain triable issues of fact
12 as to whether Google breaches the AdWords Agreement with respect to three groups of individuals:
13 (1) customers running short-term ad campaigns, for less than one month; (2) customers running
14 longer ad campaigns, where the final month of their campaign is a partial month; and (3) customers
15 who pause their campaigns. (August 21, 2007 Order at 16.) Members of these groups may be
16 entitled to recover for breach of contract if they can show that they were charged more than their
17 “Daily Budget” multiplied by the number of days in which their ad campaigns were running.

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22 ⁷ However, it appears that the Agreement only authorizes an over charge of up to 120% of a
23 customer’s daily budget to make up for a prior shortfall. (Selzter Decl., Ex. D.)

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28 ⁸ While the Court finds that Google’s practice of charging up to 120% of a customer’s Daily
Budget, in and of itself, does not constitute a breach contract, this finding does not reach any
practice of Google to over-serve and end up charging up to 120% of a customer’s Daily Budget on
one day and then to intentionally under-serve and therefore undercharge a customer on another day.
For example, in a hypothetical two-day month, if Google were to over-serve and end up charging a
customer 120% of the customer’s Daily Budget on the first day, it may be a breach of contract for
Google to intentionally under-serve and end up charging a customer 80% of the customer’s Daily
Budget on the second day.

1 **B. Unfair Competition and False Advertising Laws**

2 Plaintiffs contend that Google's use of the term "Daily Budget" constitutes false advertising
3 in violation of California Unfair Competition Law because Google calculates charges based on a
4 monthly budget, charging up to 120% of a customer's "Daily Budget." (PSJ Opposition at 12.)

5 California Unfair Competition Law defines unfair competition as any "unlawful, unfair or
6 fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." Cal.
7 Bus. & Prof. Code §§ 17200, 17500. In California, a claim for false advertising requires proof that
8 the defendant, in connection with the sale of a product or service, made an untrue or misleading
9 statement regarding the product or service. Cal. Bus. & Prof. Code § 17500; Nagel v. Twin
10 Laboratories, Inc., 109 Cal. App. 4th 39, 51 (2003). Under § 17500, a statement can be true but still
11 be misleading withing the meaning of the statute. Id. (citing Day v. AT&T Corp., 63 Cal. App. 4th
12 325, 332-33 (1998)).

13 The standard to be applied in assessing whether a statement is false or misleading within the
14 meaning of §§ 17200 and 17500 is whether it is "likely to deceive" the consumer. See Lavie v.
15 Procter & Gamble Co., 105 Cal. App. 4th 496, 507-08 (2003). To determine whether a statement is
16 likely to deceive, the court is to use a "reasonable consumer" standard, i.e., "that it is probable that a
17 significant portion of the general consuming public or of targeted consumers, acting reasonably in
18 the circumstances, could be misled." Id. at 508. A clearly disclosed term or practice is not likely to
19 deceive a consumer. Wayne v. Staples, Inc., 135 Cal. App. 4th 466, 483-84 (2006). Whether a
20 business practice constitutes a breach of contract is a separate inquiry from whether the practice
21 violates Unfair Competition Law. R & B Auto Center, Inc. v. Farmers Group, Inc., 140 Cal. App.
22 4th 327, 356 (2006). In other words, even if a practice does not breach the express terms of a
23 contract between the parties, it may still be actionable as a misleading business practice. Id.

24 Google presents evidence that its practice of charging customers up to 120 % of their "Daily
25 Budget" is clearly disclosed during the AdWords sign up process. (Declaration of Heather Wilburn
26 in Support of Goolge's PSJ Motion, Ex. A, Docket Item No. 204.) This evidence comes in the form
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1 of a screen shot showing the “Specify your daily budget” screen of the AdWords sign up webpages
2 from sometime in “the 2002 period,” which states:

3 Just enter what you’d like to spend per day in the ‘Daily Budget’ box, and Google will show
4 your ad evenly throughout the day. Your actual daily charges may fluctuate by 20% because
5 of changing search volume, but the maximum you will spend in a 30-day calendar month
6 should be no more than 30 times your daily budget. (Id.)

7 However, Google neither gives the exact dates in which the screen shot it provides would have been
8 shown, nor evidence that Plaintiffs actually saw the same sign up webpages when they signed up.⁹
9 Plaintiff Hanson alleges it originally began running AdWords campaigns in 2002, and its 30(b)(6)
10 representative testified that Google’s practice of charging up to 120% of Hanson’s “Daily Budget”
11 was not apparent until certain email communications from a company representative were received
12 in March 30, 2005. (SAC ¶ 56; Declaration of M. Christopher Jhang, Ex. A at 135:20-137:15,
13 169:16-170:15, hereafter, “Jhang Decl.,” Docket Item No. 90.) Plaintiff Stern similarly testifies that
14 he was not aware of Google’s practice of charging up to 120% of a customer’s “Daily Budget” when
15 he began running AdWords campaigns. (Jhang Decl., Ex B at 81:21-82:10.)

16 Thus, the issue becomes whether a reasonable consumer would have been misled by the term
17 “Daily Budget” such that the consumer would suffer injury by being charged up to 120% of his or
18 her “Daily Budget” on a single day. Plaintiffs present evidence that “Daily Budget” may reasonably
19 be interpreted as meaning a maximum set amount that Google will charge on any particular day. For
20 example, in various iterations of the AdWords Agreement, Google represents the following:

21 You have complete control over how long you participate in AdWords, and you control the
22 maximum you want to spend per day. (Seltzer Decl., Ex C. at 012.)

23 You have complete control over how much you spend and how you spend it. You choose the
24 maximum cost-per-click (CPC) and the daily budget that fit your advertising goals. (Id., Ex.
25 A at GOOG-HN 20825, Ex. B at GOOG-HN 20837.)

26 You also control your overall spending by setting a daily budget (how much you want to pay
27 per day).

28 ⁹ At the hearing on Google’s motion, counsel for Plaintiffs objected to this screen shot under
29 Fed. R. Civ. P. 56(e). Since Google did provide a supporting witness which had personal knowledge
30 that the screen shot was actually shown to customers during the relevant time frame, the Court
31 sustains Plaintiffs’ objection.

1 ...
2 If your daily budget is lower than the recommended amount, Google will deliver your ads
3 evenly throughout the day to keep your clicks at or below your daily budget. (Id., Ex. A at
4 GOOG-HN 20906.)

5 These statements suggest that AdWords customers have control over their “Daily Budget.” The
6 statements may also reasonably be interpreted as implying, if not outright affirming, that the “Daily
7 Budget” is the maximum charge customers will incur on any given day that they have an active
8 campaign. The Court finds that a reasonable consumer could be misled by these statements unless
9 Google’s practice of charging up to 120% of a customer’s “Daily Budget” would have been apparent
10 to an ordinary consumer.

11 As noted above, “Daily Budget” is defined in the AdWords Agreement as allowing for the
12 possibility of overdelivery of 120% on any given day. (Id., Ex. D, Ex. A at GOOG-HN, Ex. B at
13 GOOG-HN 20904.) However, Google has not provided sufficient evidence that the disclosure of its
14 practice of charging up to 120% of a customer’s “Daily Budget” is so prominent that a reasonable
15 consumer would necessarily view it. Instead, the disclosure is located well within the AdWords
16 Agreement, a document over 100 pages long. (See id., Ex. C.)

17 Accordingly, the Court finds that there are triable issues of fact as to whether Google’s use of
18 the term “Daily Budget,” while charging up to 120% of a customer’s “Daily Budget,” constitutes
19 false advertising in violation of California Unfair Competition Law.”¹⁰

20 **V. CONCLUSION**

21 The Court GRANTS in part and DENIES in part Google’s Motion for Partial Summary
22 Judgment.

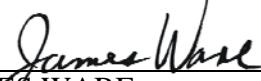
23
24 ¹⁰ While not directly at issue in the parties’ briefs, there are triable issues of facts as to
25 whether a customer, who does not belong to one of the three groups discussed at the end of Section
26 IV.A., *supra*, would suffer actual injury from relying on disclosures that “Daily Budget” means a
27 maximum amount charged per day. (See Seltzer Decl., Ex. C at 012.) For instance, the system
 could result in “overexposure” on certain days, which could create difficulties in meeting demand
 and maintaining customer satisfaction. (See Seltzer Decl., Ex. G.)

1 The Court grants Google's motion with respect to whether the practice of charging customers
2 up to 120% of their "Daily Budget," in and of itself, constitutes a breach of the AdWords
3 Agreement. The Court finds that this practice is not in and of itself a breach of contract.

4 The Court denies Google's motion with respect to whether Google's use of the term "Daily
5 Budget," while charging up to 120% of a customer's "Daily Budget," constitutes false advertising in
6 violation of California Unfair Competition Law. The Court finds that this practice may be
7 actionable under § 17200 *et seq.*

8 The parties shall appear for a Case Management Conference on **June 9, 2008 at 10 a.m.**
9 Pursuant to the Civil Local Rules of Court, the parties shall meet and confer and file a Joint Case
10 Management Statement on or before **May 30, 2008**. The Statement shall inform the Court regarding
11 the posture of the case and the parties' readiness for a class certification hearing.

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13 Dated: May 14, 2008
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JAMES WARE
United States District Judge

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United States District Court

For the Northern District of California

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Adel A. Nadji anadji@audetlaw.com
3 Christopher M. Jhang cjang@perkinscoie.com
4 David T. Biderman dbiderman@perkinscoie.com
5 Judith B. Gitterman gittj@perkinscoie.com
6 Lester L Levy llevy@wolfdpopper.com
7 Lisa Delehunt Olle lolle@perkinscoie.com
8 Marc Morris Seltzer mseltzer@susmangodfrey.com
9 Michele Fried Raphael mraphael@wolfdpopper.com
10 William M. Audet waudet@audetlaw.com

11 **Dated: May 14, 2008**

Richard W. Wieking, Clerk

12 **By: /s/ JW Chambers**
13 **Elizabeth Garcia**
14 **Courtroom Deputy**

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